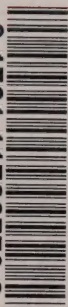


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MEMORANDUM
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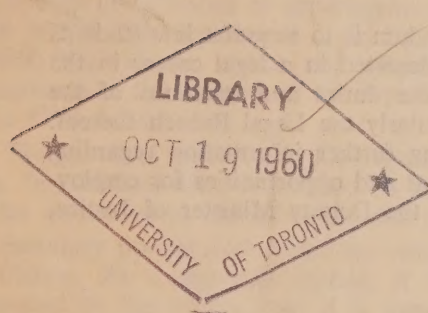
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MEMORANDUM

on the Legal Branch
of the Department of Justice
Government of Canada



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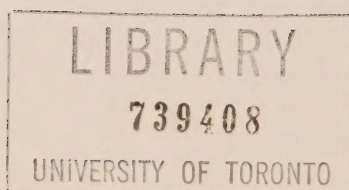
DEPARTMENT OF JUSTICE
OTTAWA

October 1, 1960

[Queen's Printer]

FOREWORD

THE purpose of this Memorandum is to acquaint law students and lawyers who might be interested in a legal career in the Department of Justice with the duties and functions of the Department of Justice, particularly the Legal Branch thereof. Prospective candidates desiring further information regarding the activities of the Department and opportunities for employment therein should write to the Deputy Minister of Justice, Ottawa.



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THE LEGAL BRANCH OF THE DEPARTMENT OF JUSTICE GOVERNMENT OF CANADA

I. INTRODUCTION

The Government of Canada is divided into departments, each of which is charged with some branch of government business. In the United Kingdom, some of the older departments were organized under the discretionary authority of the Crown as head of the executive, but the more modern departments were established by statute. In Canada all government departments are established by statute.

The head of each department is a Minister of the Crown who is a member of the Queen's Privy Council for Canada and a member of the cabinet. Ministers must be members of either the Senate or the House of Commons; but at the present time all Ministers of departments are members of the House of Commons. There is for each department a deputy minister appointed by the Governor in Council; the officers, clerks and other employees who are required for the management of the business of the department are appointed under the provisions of the Civil Service Act.

The principal functions of the departments are set out in the statutes creating them. In addition, each department is responsible for the administration of the statutes pertaining to the subject-matter of the department.

Statutory powers and duties are vested in or imposed upon the Ministers of the Crown. As a practical matter, it must be recognized, and it has been recognized by the courts, that it is impossible for a Minister to carry out his powers and duties personally. He can perform his powers and duties only through the staff that is provided to him for the purpose. A Minister cannot do personally all the things that he is required to do, and he cannot be aware of all the matters that are required to be done. The ordinary affairs of his department are, therefore, handled by the permanent service of his department in accordance with the principles and methods that he has directed or approved.

The courts have recognized that this is the way in which our parliamentary system of government must operate, and they will not permit any person other than the Minister to challenge the exercise of his powers on the ground that the Minister was not himself a party thereto.

The Minister is, of course, responsible for everything done in the conduct of the business of his department; those matters that are of particular importance are, therefore, submitted to him for consideration and decision, and his officers are accountable to him for their conduct of the affairs of the department.

The Department of Justice consists of a number of branches or divisions. The purely legal functions are performed by the Legal Branch. In addition there is the Bankruptcy Branch, the Penitentiaries Branch, and the Combines Investigation Branch, and the Minister of Justice is the Minister responsible for the Royal Canadian Mounted Police, the Restrictive Trade Practices Commission and the National Parole Board.

The Department of Justice was first established by the Department of Justice Act, chapter 39 of the statutes of 1868. This statute has been carried forward to the present day without substantial change, and now appears as chapter 71 of the Revised Statutes of Canada, 1952. The Department of Justice Act sets out, in a general way, the functions of the Department. In addition, the Department of Justice is responsible for the administration of the following Acts:

Admiralty Act, R.S.C. 1952, c. 1
Bankruptcy Act, R.S.C. 1952, c. 14
Canada Evidence Act, R.S.C. 1952, c. 307
Canada Prize Act, R.S.C. 1952, c. 28
Canadian Bill of Rights, 1960, c. 44.
Combines Investigation Act, R.S.C. 1952, c. 314
Criminal Code, 1953-54, c. 51
Crown Liability Act, 1952-53, c. 30
Department of Justice Act, R.S.C. 1952, c. 71
Exchequer Court Act, R.S.C. 1952, c. 98
Expropriation Act, R.S.C. 1952, c. 106
Extradition Act, R.S.C. 1952, c. 322
Fugitive Offenders Act, R.S.C. 1952, c. 127
Identification of Criminals Act, R.S.C. 1952, c. 144
Inquiries Act, R.S.C. 1952, c. 154
Interpretation Act, R.S.C. 1952, c. 158
Judges Act, R.S.C. 1952, c. 159
Juvenile Delinquents Act, R.S.C. 1952, c. 160
Lord's Day Act, R.S.C. 1952, c. 171
Official Secrets Act, R.S.C. 1952, c. 198
Parole Act, 1958, c. 38
Penitentiary Act, R.S.C. 1952, c. 206
Petition of Right Act, R.S.C. 1952, c. 210
Prisons and Reformatories Act, R.S.C. 1952, cc. 217, 333
Royal Canadian Mounted Police Act, 1959, c. 54
Royal Canadian Mounted Police Superannuation Act, 1959, c. 34
Solicitor General Act, R.S.C. 1952, c. 253
Supreme Court Act, R.S.C. 1952, cc. 259, 335
Tobacco Restraint Act, R.S.C. 1952, c. 266
Yukon Administration of Justice Act, R.S.C. 1952, c. 299.

The Department of Justice is the legal department of the Government of Canada and performs somewhat the same functions in relation to the Government of Canada as an ordinary lawyer in private practice performs in relation to his clients, or as a law department of a large corporation, such as the Canadian Pacific Railway Company, performs in relation to the corporation.

II. FUNCTIONS OF THE DEPARTMENT OF JUSTICE

The principal functions of the Department of Justice are set out in the Department of Justice Act. Section 2 provides that there shall be a department called the Department of Justice over which the Minister of Justice is to preside; the Minister of Justice is also *ex officio* the Attorney General of Canada. The duties of the Minister of Justice and Attorney General are set out in sections 4 and 5 of the Act, as follows:

“4. The Minister of Justice shall

- (a) be the official legal adviser of the Governor General and the legal member of Her Majesty's Privy Council for Canada;
- (b) see that the administration of public affairs is in accordance with law;
- (c) have the superintendence of all matters connected with the administration of justice in Canada, not within the jurisdiction of the governments of the provinces;
- (d) advise upon the legislative Acts and proceedings of each of the legislatures of the provinces of Canada, and generally advise the Crown upon all matters of law referred to him by the Crown;
- (e) have the superintendence of the penitentiaries and the prison system of Canada;
- (f) be charged generally with such other duties as are at any time assigned by the Governor in Council to the Minister of Justice.

5. The Attorney General of Canada shall

- (a) be entrusted with the powers and charged with the duties that belong to the office of the Attorney General of England by law or usage, so far as those powers and duties are applicable to Canada, and also with the powers and duties that, by the laws of the several provinces, belonged to the office of attorney general of each province up to the time when the *British North America Act 1867*, came into effect, so far as those laws under the provisions of the said Act are to be administered and carried into effect by the Government of Canada;
- (b) advise the heads of the several departments of the Government upon all matters of law connected with such departments;
- (c) be charged with the settlement and approval of all instruments issued under the Great Seal of Canada;
- (d) have the regulation and conduct of all litigation for or against the Crown or any public department, in respect of any subject within the authority or jurisdiction of Canada;
- (e) be charged generally with such other duties as are at any time assigned by the Governor in Council to the Attorney General of Canada.”

There is also the office of Solicitor General in Canada, established by the Solicitor General Act, which is now chapter 253 of the Revised Statutes of Canada, 1952. Originally the Solicitor General was not a member of the Privy Council and not a member of the cabinet, but in recent years he has been both.

His functions, as set out in the Solicitor General Act, are to assist the Minister of Justice in the counsel work of the Department of Justice and to perform such other duties as are assigned to him by the Governor in Council.

III. ORGANIZATION OF THE LEGAL BRANCH OF THE DEPARTMENT

The Legal Branch, which functions directly under the Deputy Minister of Justice and Deputy Attorney General, consists of

- (a) two Associate Deputy Ministers and two Assistant Deputy Ministers,
- (b) a number of senior officers, who are classified as Senior Advisory Counsel, and
- (c) a number of junior legal officers who are classified as Advisory Counsel, Grade 1, Advisory Counsel, Grade 2 or Advisory Counsel, Grade 3.

For the purpose of carrying on the legal work of the Department, the Legal Branch is divided into six sections as follows:

- (a) Civil Litigation Section,
- (b) Legislation Section,
- (c) Advisory Section,
- (d) Criminal Law Section,
- (e) Civil Law Section,
- (f) Departmental Services Section.

Each of these sections is headed by a Director holding the position of Senior Advisory Counsel.

Officers are usually assigned to a particular Section, but may also be called upon to discharge duties falling within other Sections. Thus, members of the Civil Litigation Section or of the Legislation Section might also do advisory work and members of all Sections might be required to advise and assist in the preparation of bills or regulations. Legal officers may also be transferred from one Section to another or receive special assignments on particular problems.

The work of the various Sections may be described as follows:

(a) *Civil Litigation Section*

This Section is charged with all matters involving actual litigation for or against the Government of Canada and originating in any of the common law provinces. All land transactions and other non-criminal matters usually requiring the employment of legal agents in those provinces are also the responsibility of the Civil Litigation Section.

By section 5(d) of the Department of Justice Act, the Attorney General of Canada is charged with the regulation and conduct of all litigation for or against the Crown or any public department in respect of any subject within the authority or jurisdiction of Canada. The following are the principal classes of litigation:

- (i) *Petitions of Right*—These are regulated by the Petition of Right Act, R.S.C. 1952, c. 210. No fiat is necessary. The suppliant institutes proceedings by filing his petition in the Exchequer Court and the matter then proceeds as an ordinary action.

- (ii) *Informations in the Exchequer Court*—The Attorney General may proceed by information in the Exchequer Court in respect of any claim by the Crown against a subject. In addition, the Attorney General is required, by s. 27 of the Expropriation Act, R.S.C. 1952, c. 106, to file an information in the Exchequer Court where land has been expropriated and the compensation to be paid cannot be agreed upon with the former owner.
- (iii) *Actions in the Provincial Courts*—The Attorney General may elect to proceed against a subject in the provincial courts. As a matter of policy, the Crown does not proceed in the provincial courts where the Crown debtor has a counter-claim in an amount in respect of which the provincial court has no jurisdiction. In such cases, an information is filed in the Exchequer Court so that the subject may proceed by way of petition of right and have the two trials joined. By virtue of the Crown Liability Act, negligence claims against the Crown not exceeding one thousand dollars may be enforced by action in the provincial courts against the Attorney General of Canada.
- (iv) *Income Tax and Succession Duty Appeals and Appeals from the Decision of various other Administrative Tribunals*—Provision is contained in various statutes for appeals to the Exchequer Court and such appeals fall within the class of ordinary litigation.
- (v) *Crown Litigation conducted in the name of Nominated Persons*—Various statutes provide for litigation involving the rights of the Crown being conducted in the name of Crown agents, such as the Canadian Commercial Corporation and other Crown companies. The device is purely procedural and is to enable the matter to be litigated in a court that would not otherwise have jurisdiction.
- (vi) *Disputes between Governments*—S. 31 of the Exchequer Court Act gives the Court jurisdiction, *inter alia*, in case of controversy between Canada and a province, if the legislature of the province concerned has passed an Act agreeing that the Court shall have such jurisdiction.
- (vii) *Actions in Rem*—Under the taxation statutes, provision is made for forfeiture of goods that are the subject-matter of offences against the statute and these forfeitures are enforced by actions *in rem* in the Exchequer Court instituted by information.
- (viii) *Actions against the Attorney General*—In certain cases, an action can be instituted against the Attorney General for a declaration where a petition of right would not lie because no relief is sought. There are also cases where the Attorney General may be made a defendant in proceedings against the Crown when rights of the Crown are incidentally involved.
- (ix) *Litigation between subjects in which the Crown has a direct or indirect interest*—The Crown sometimes undertakes the defence of litigation against a servant in respect of something that he did in the course of his employment or against a person who has a right of indemnity against the Crown. The Attorney General occasionally intervenes in litigation involving constitutional questions.

- (x) *References to the Supreme Court of Canada*—By s. 55 of the Supreme Court Act, the Governor in Council may refer important questions of law or fact to the Supreme Court of Canada for decision. These references usually arise out of constitutional questions.

The civil litigation is conducted, under the direction of the Attorney General of Canada, by counsel who are legal officers of the Department to the extent that that is feasible or, where that is not feasible, by practising lawyers who are instructed for particular cases.

(b) *Legislation Section*

Beginning in 1946, an organization was established in the Department of Justice for the preparation of government measures, and a system has been designed to ensure that the legislative programme for a session will be adequately prepared in sufficient time to enable it to be dealt with. Prior to that time departments prepared their own bills, assisted by the Department of Justice if they so requested. Now, all Bills must be prepared in the Department of Justice in the Legislation Section by persons who have been specially trained for this type of work.

A cabinet committee on legislation has been established to superintend the preparation of the legislative programme. The Director in charge of the Section attends all meetings of the committee. Members of the Legislation Section, during the progress of a session, assist Ministers in piloting their legislation through Parliament.

In addition, the Legislation Section has also undertaken the following duties:

- (i) *Territorial Ordinances*—Preparation of current legislative programmes of the Councils of the Yukon Territory and Northwest Territories and revisions of Ordinances of these Territories.
- (ii) *Regulations*—Preparation of regulations under statutes upon request of the departments concerned.
- (iii) *Office Consolidations*—Preparation of office consolidations of statutes and amendments for all government departments.
- (iv) *Formal Documents*—Preparation of documents issued under the great seal (letters patent, commissions, proclamations, etc.).
- (v) *Revision of the Statutes*—Preparation of a consolidation of each statute from session to session for use at the next general revision of the statutes.
- (vi) *Judges*—Documents and opinions in relation to judges, their appointment and retirement, and travelling allowances.
- (vii) *Canadian Bill of Rights*—Examination of Bills and regulations as required by the Canadian Bill of Rights.

(c) *Advisory Section*

The Minister of Justice is, by statute, charged with the responsibility of giving legal advice to the Government of Canada, including the various departments and Crown corporations. Such advice is given by the Deputy Attorney General of Canada and the Advisory Section of the Department of Justice is responsible for the preparation of the opinions given. The Advisory Section performs this function in the following ways:

- (i) By the preparation of written legal opinions at the request of government departments and Crown corporations. The matters upon which

legal advice is requested are usually submitted in written form by the department or corporation concerned and these matters include:

1. advice as to the interpretation of statutes for the administration of which the department in question is responsible, financial statutes affecting the department, statutes affecting employees in the department, etc.; many problems concern the authority of the department in the conduct of its administration;
 2. advice concerning the legal relations between the department and members of the public, including the preparation and interpretation of contracts and regulations; and
 3. tort, contract and other claims by or against the department.
- (ii) By the co-ordination of the work of officers of the Department of Justice who are members of interdepartmental committees and the preparation of legal advice to be given to the committees.

The Advisory Section is also responsible for special studies undertaken on direction of the Deputy Attorney General of Canada.

(d) *Criminal Law Section*

- (i) *Clemency*—Every capital case is reviewed by the Governor in Council, whether or not the accused makes application for review, and a decision is taken in each case as to whether or not the prerogative of mercy shall be exercised. A report and recommendation is made to the Governor in Council in each case by either the Minister of Justice or the Solicitor General.

Applications for an exercise of the royal prerogative of mercy include also applications for remission of pecuniary penalties, lifting or suspension of prohibitions ordered by the court, and the return of goods forfeited to the Crown.

Under section 595 of the Criminal Code, the Minister of Justice may, on application for the mercy of the Crown on behalf of a person convicted on indictment, refer the case to the Court of Appeal or direct a new trial. In that connection, the principal function of the Criminal Law Section is to collect the facts necessary to enable the Minister of Justice to decide what recommendations he will make to the Governor in Council on applications for the mercy of the Crown.

- (ii) *Extradition*—The Criminal Law Section is in charge of the administration of the Extradition Act, R.S.C. 1952, c. 322.
- (iii) *Prosecutions*—The Criminal Law Section has the direction of prosecutions for infractions of federal statutes other than the Criminal Code. The responsibility for the enforcement of all criminal law, including the Criminal Code, in the Northwest Territories and the Yukon Territory has been taken over from the Department of Northern Affairs and National Resources.
- (iv) *Criminal Code*—The Criminal Law Section reviews all proposals for amending this important federal statute.

(e) Civil Law Section

This Section corresponds to the Civil Litigation Section, for all matters concerned with the civil law (*droit civil*), as opposed to the common law. It deals with all litigation for or against the Government of Canada and with all land transactions and other non-criminal matters requiring the employment of legal agents in the Province of Quebec.

It may, therefore, be said that the foregoing description of the duties of the Civil Litigation Section with respect to the common law provinces, also applies to the duties of the Civil Law Section with respect to the Province of Quebec.

The Civil Law Section also advises the Minister of Justice in certain matters that do not necessarily involve actual litigation, but are essentially concerned with the application of the Civil Code of the Province of Quebec. This Code is based on the old French law in force in the Province of Quebec before 1866 and is similar to the Code Napoleon presently in force in France.

(f) Departmental Services Section

This Section comprises the legal advisers furnished to other departments. The legal advisers in the Departments of Agriculture, Citizenship and Immigration, Finance, Northern Affairs and National Resources, Privy Council, Public Works, Trade and Commerce, and Mines and Technical Surveys are officers of the Department of Justice. Their function is, under the Deputy Attorney General of Canada, to furnish legal advice and obtain official opinions of the Deputy Attorney General of Canada for the departments to which they are assigned. Their activities are co-ordinated through the Director of the Section.

(g) Miscellaneous

In addition to the foregoing, certain miscellaneous matters fall within the purview of the Legal Branch of the Department of Justice.

The Minister of Justice advises the Government on the appointment and retirement of judges, and he has supervision of the staffs of the Supreme Court of Canada and the Exchequer Court of Canada.

The statutes of the provinces are examined in the Department of Justice with a view to possible disallowance under the British North America Act.

The Minister of Justice is also the Attorney General of the Northwest Territories and the Yukon Territory. He is chairman of the legislation committee of the cabinet, and is a member of the Treasury Board.

IV. OTHER BRANCHES OF THE DEPARTMENT

The following is a summary of the functions and duties of Branches other than the Legal Branch.

1. *Bankruptcy Branch*

The Minister of Justice is responsible for the administration of the Bankruptcy Act, R.S.C. 1952, c. 14. Pursuant to section 5, it is the Minister who authorizes the issue of trustee licences to applicants and the annual renewals thereof. He may, for cause, suspend or cancel the licence of any licensee and may remove the trustee from office and appoint another in his stead. The Minister

is empowered by the Act to authorize any district, county or other judge to exercise any or all of the powers and jurisdiction of the court or of a judge or registrar thereof.

The Act provides for the appointment, by the Governor in Council, of a Superintendent of Bankruptcy to supervise the administration of all estates to which the Act applies.

The duties of the Superintendent include:

- (a) receiving applications for licences and renewals thereof;
- (b) making an investigation into the character and qualifications of each applicant and reporting his findings to the Minister;
- (c) subject to authorization by the Minister, issuing the licences and renewals as well as keeping a record thereof;
- (d) requiring the filing of adequate security and enforcing it when the need arises;
- (e) keeping appropriate records;
- (f) receiving complaints concerning the trustees' administration and making such investigations as are deemed advisable;
- (g) inspecting or investigating estates as may appear expedient and reporting any irregularities to the Minister; and
- (h) examining trustees' statements of receipts and disbursements.

2. Penitentiaries Branch

Section 3 of the Penitentiary Act, R.S.C. 1952, c. 206, provides that the Minister shall have the control and management of all penitentiaries and all prisoners and other persons confined therein and inmates thereof and all matters connected therewith.

Section 5 provides that the Commissioner of Penitentiaries shall, under the Minister, have the control and management of all penitentiaries and all prisoners and other persons confined therein and inmates thereof and over all matters connected therewith.

In practice, the day-to-day administration of the penitentiaries is carried out under the direction of the Commissioner. Important matters of policy are submitted to the Minister for his approval, and it has been the normal practice to inform the Minister and obtain his approval of matters that involve negotiations with the public.

Associated with the Commissioner, there are Deputy Commissioners and Assistant Commissioners who are concerned with particular phases of the administration of the penitentiaries, including training of personnel, medical and psychiatric services, prison industries and farms, vocational training, financial control and other matters.

3. Combines Branch

The Combines Investigation Act provides for the investigation of offences under the Act. Generally speaking, the Act forbids:—

- (1) Combinations which, if carried into effect, would limit production, restrict channels of distribution, or fix prices or other conditions of sale in a manner which is undue or to the detriment of the public;

- (2) Mergers, trusts and monopolies which operate or are likely to operate to the detriment of the public;
- (3) The practice of resale price maintenance;
- (4) Price discrimination in regard to competing customers; and the selling of goods at unreasonably low prices with the design or effect of substantially lessening competition or eliminating competitors.

The legislation provides for a Director of Investigation and Research and his staff and for a Restrictive Trade Practices Commission. The Director's staff consists, in part, of lawyers and, in part, of economists.

The Director is required to commence an investigation into a suspected offence

- (a) upon formal application of six adult citizens,
- (b) upon direction of the Minister, and
- (c) whenever he, himself, has reasonable grounds for believing that an offence is being or about to be committed.

When the Director has gathered together all the information relating to an inquiry, if he believes it discloses an offence, he compiles it into a "Statement of Evidence" which he presents to the Commission and to the persons against whom allegations are made in the Statement.

4. Restrictive Trade Practices Commission

The Restrictive Trade Practices Commission, comprising not more than three members, is responsible for appraising the evidence submitted to it by the Director of Investigation and Research under the Combines Act and the parties under investigation, and for making a report to the Minister. Investigations are instituted on the formal application of six citizens, or on direction of the Minister, or on the initiative of the Director. When the Director has gathered all the information the Commission hears argument and following this hearing the Commission prepares and submits a report to the Minister. Prosecutions may be commenced by the attorney general of a province or at the instance of the Attorney General of Canada.

5. Royal Canadian Mounted Police

The Royal Canadian Mounted Police Force is established under the Royal Canadian Mounted Police Act, R.S.C. 1952, c. 241, and is under the control and management of the Minister of Justice. This Force conducts throughout Canada the police work required in the administration of all statutes of the Parliament of Canada, other than the Criminal Code. By arrangement with a number of the provinces, the Force has undertaken provincial police duties and in those provinces has charge of police work under the Criminal Code and all provincial statutes. Similar agreements have also been made with municipalities throughout Canada.

6. National Parole Board

Subject to limited exceptions, the National Parole Board has, by the Parole Act, been given exclusive jurisdiction and absolute discretion to grant, refuse to

grant or revoke parole in the case of persons who have been convicted of offences under federal Acts and who are under sentences of imprisonment for those offences. The Board, consisting of five members, is assisted in carrying out its functions by a staff of parole officers and other employees.

V. STAFF

1. Professional Staff

The work of the legal officer in the Department of Justice as a professional man is carried on under conditions not unlike those applicable to the lawyer who is a partner or an employee in a large legal firm. The lawyer who is a partner or an employee in a large legal firm carries on his day-to-day work, taking instructions from the various clients of the firm assigned to him and having conferences with members of the public; he must conduct himself in accordance with the traditions and principles his associates or employers have adopted and he consults with them on any matter requiring their approval or decision. Similarly, a legal officer in the Department of Justice, in the course of his ordinary day-to-day professional work, receives instructions from the various other departments and government agencies, and he carries out his professional duties in consultation with those departments and agencies, in accordance with the traditions and principles of the Department, which require him to consult with his superiors and to take directions on matters of special importance.

The recruiting plan of the Department in recent years has been to recruit officers at the time they are admitted to the bar, or very shortly thereafter, so that the Department may be staffed with lawyers who have received their training and experience in the special branches of professional work arising in the conduct of the business of government. The aim has been, and is, to take only those who have superior qualifications, both academic and otherwise, and to give them as broad a training in the work of the Department as is possible.

2. Salaries

As previously stated, there are three classifications of junior legal officers and one classification of senior legal officers below the Director and Deputy Minister classifications.

Rates of salary for these various classifications are, as in the case of other positions in the civil service, subject to review and change. The following salary rates are, therefore, those applicable at the time of publication of this Memorandum, October 1, 1960.

Advisory Counsel 1	\$ 4,740 to \$ 5,880
Advisory Counsel 2	\$ 5,940 to \$ 7,140
Advisory Counsel 3	\$ 6,840 to \$ 7,860
Senior Advisory Counsel	\$ 9,000 to \$13,750
Directors	\$14,000 to \$16,000
Deputy Minister classes	\$16,500 to \$20,000

Legal officers joining the Legal Branch are, normally, engaged as Advisory Counsel 1 and at the third rate of the range for that classification, namely, at a starting salary of \$5,160.

The policy is to promote, quite rapidly, legal officers who demonstrate that they have the professional qualifications and the willingness to assume and discharge responsible duties. Such an officer can, for example, reasonably expect to have reached the position of Senior Advisory Counsel and a salary of \$10,000 after approximately five years of service.

3. Superannuation

Members of the permanent staff of the Department come under the Public Service Superannuation Act. Each employee is required to make a contribution towards pension, which is deducted from salary. The contribution is six and one-half per cent of salary in the case of male employees and five per cent in the case of female employees. The government contributes an equal amount. Retirement is optional at age sixty and compulsory at age sixty-five. Upon retirement, a contributor is eligible for a life pension equal to two per cent of his average salary for the six years of highest salary, for every year of service up to a maximum of thirty-five; one-half of the pension continues to the widow of a retired employee.

The Public Service Superannuation Act also includes provision for a compulsory death benefit scheme. The amount of the benefit, payable upon death to the surviving spouse or estate, is \$5,000 or the salary of the employee, whichever is the lesser. Contributions are made by deduction from salary at the rate of ten cents per month for every \$250 of death benefit.

4. Leave of Absence

Members of the legal staff are entitled to the annual holiday leave and other leave applicable to the civil service generally.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1960

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MEMORANDUM

on the Legal Branch
of the Department of Justice
Government of Canada



DEPARTMENT OF JUSTICE
OTTAWA

October 1, 1957

FOREWORD

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THE LEGAL BRANCH OF THE DEPARTMENT OF JUSTICE GOVERNMENT OF CANADA

I. INTRODUCTION

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The head of each department is a Minister of the Crown who is a member of the Queen's Privy Council for Canada and a member of the cabinet. Ministers must be members of either the Senate or the House of Commons, but at the present time all Ministers of departments are members of the House of Commons. There is for each department a deputy minister appointed by the Governor in Council; the officers, clerks and other employees who are required for the management of the business of the department are appointed under the provisions of the Civil Service Act.

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The Department of Justice was first established by the Department of Justice Act, chapter 39 of the statutes of 1868. This statute has been carried forward to the present day without substantial change, and now appears as chapter 71 of the Revised Statutes of Canada, 1952. The Department of Justice Act sets out, in a general way, the functions of the Department. In addition, the Department of Justice is responsible for the administration of the following Acts:

Admiralty Act, R.S.C. 1952, c. 1
Bankruptcy Act, R.S.C. 1952, c. 14
Canada Evidence Act, R.S.C. 1952, c. 307
Canada Prize Act, R.S.C. 1952, c. 28
Combines Investigation Act, R.S.C. 1952, c. 314
Criminal Code, 1953-54, c. 51
Crown Liability Act, 1952-53, c. 30
Department of Justice Act, R.S.C. 1952, c. 71
Exchequer Court Act, R.S.C. 1952, c. 98
Expropriation Act, R.S.C. 1952, c. 106
Extradition Act, R.S.C. 1952, c. 322
Financial Administration Act, R.S.C. 1952, c. 116, s. 95
Fugitive Offenders Act, R.S.C. 1952, c. 127
Identification of Criminals Act, R.S.C. 1952, c. 144
Inquiries Act, R.S.C. 1952, c. 154
Interpretation Act, R.S.C. 1952, c. 158
Judges Act, R.S.C. 1952, c. 159
Juvenile Delinquents Act, R.S.C. 1952, c. 160
Lord's Day Act, R.S.C. 1952, c. 171
Official Secrets Act, R.S.C. 1952, c. 198
Penitentiary Act, R.S.C. 1952, c. 206
Petition of Right Act, R.S.C. 1952, c. 210
Prisons and Reformatories Act, R.S.C. 1952, cc. 217, 333
Railway Act, R.S.C. 1952, c. 234, s. 43
Royal Canadian Mounted Police Act, R.S.C. 1952, c. 241
Solicitor General Act, R.S.C. 1952, c. 253
Supreme Court Act, R.S.C. 1952, cc. 259, 335
Ticket of Leave Act, R.S.C. 1952, c. 264
Tobacco Restraint Act, R.S.C. 1952, c. 266
Yukon Administration of Justice Act, R.S.C. 1952, c. 299.

The Department of Justice is the legal department of the Government of Canada and performs somewhat the same functions in relation to the Government of Canada as an ordinary lawyer in private practice performs in relation to his clients, or as a law department of a large corporation, such as the Canadian Pacific Railway Company, performs in relation to the corporation.

The functions of the Department have, to a large extent, been inherited from different government offices in the United Kingdom. A brief account of those offices might, therefore, be usefully given before considering, in detail, the work and organization of the Department of Justice.

II. UNITED KINGDOM OFFICES

The principal offices in the United Kingdom Government having legal functions are the offices of the Lord Chancellor, the Attorney General, the Solicitor to the Treasury, Parliamentary Counsel, the Director of Public Prosecutions and the Secretary of State for the Home Department.

1. *The Lord Chancellor*

The Lord Chancellor is a member of the Queen's Privy Council and a member of the Cabinet; he is Speaker of the House of Lords and the official channel of communication between the Sovereign and Parliament; he is a member of the High Court of Justice and its president, president of the Chancery Division of the High Court of Justice, and an *ex officio* judge and president of the Court of Appeal.

The Lord Chancellor is custodian of the great seal and causes it to be affixed to state documents. Originally, the form of instrument to be sealed by the great seal was settled by the Attorney General, but now the seal is affixed through the office of the Clerk of the Crown in Chancery. The Lord Chancellor advises the Sovereign on the appointment of judges, and generally, he oversees the administration of justice and the business of the courts.

2. *Law Officers*

The law officers of the Crown are the Attorney General and the Solicitor General. Historically, the Attorney General was the personal legal adviser to the Sovereign, and he represented the Sovereign in the courts. The Solicitor General acted when the office of Attorney General was vacant, or when the Attorney General was unable to act in any particular case.

Originally the Attorney General and the Solicitor General were members of the bar in private practice. Today they are members of Parliament and are not permitted to engage in private practice. They are not, however, members of the cabinet.

3. *Solicitor to the Treasury*

The Treasury Department has charge of all matters relating to public finance or the civil service. The Solicitor to the Treasury Department deals with legal problems arising in the day-to-day work of the government departments and also supplies legal services to the various government departments who do not have their own legal branches.

4. *Parliamentary Counsel*

A special branch of the Treasury Department has been established for the purpose of preparing government legislation, and is known as the Office of Parliamentary Counsel of Her Majesty's Treasury. Originally, the Parliamentary Counsel Office prepared only government bills involving financial matters, but at the present time the office prepares all government legislation.

5. *Director of Public Prosecutions*

The Director of Public Prosecutions, as his name implies, has charge of criminal prosecutions.

6. *Secretary of State for the Home Department*

The Home Department has charge of matters pertaining to prisons, executions and remissions, controls the London Police Force and Scotland Yard and superintends the police forces in the counties and county boroughs. Generally speaking, the Department is responsible for the internal peace of the country.

III. FUNCTIONS OF THE DEPARTMENT OF JUSTICE

The principal functions of the Department of Justice are set out in the Department of Justice Act. Section 2 provides that there shall be a department called the Department of Justice over which the Minister of Justice is to preside; the Minister of Justice is also *ex officio* the Attorney General of Canada. The duties of the Minister of Justice and Attorney General are set out in sections 4 and 5 of the Act, as follows:

“4. The Minister of Justice shall

- (a) be the official legal adviser of the Governor General and the legal member of Her Majesty's Privy Council for Canada;
- (b) see that the administration of public affairs is in accordance with law;
- (c) have the superintendence of all matters connected with the administration of justice in Canada, not within the jurisdiction of the governments of the provinces;
- (d) advise upon the legislative Acts and proceedings of each of the legislatures of the provinces of Canada, and generally advise the Crown upon all matters of law referred to him by the Crown;
- (e) have the superintendence of the penitentiaries and the prison system of Canada;
- (f) be charged generally with such other duties as are at any time assigned by the Governor in Council to the Minister of Justice.

5. The Attorney General of Canada shall

- (a) be entrusted with the powers and charged with the duties that belong to the office of the Attorney General of England by law or usage, so far as those powers and duties are applicable to Canada, and also with the powers and duties that, by the laws of the several provinces, belonged to the office of attorney general of each province up to the time when the *British North America Act 1867*, came into effect, so far as those laws under the provisions of the said Act are to be administered and carried into effect by the Government of Canada;
- (b) advise the heads of the several departments of the Government upon all matters of law connected with such departments;

- (c) be charged with the settlement and approval of all instruments issued under the Great Seal of Canada;
- (d) have the regulation and conduct of all litigation for or against the Crown or any public department, in respect of any subject within the authority or jurisdiction of Canada;
- (e) be charged generally with such other duties as are at any time assigned by the Governor in Council to the Attorney General of Canada."

There is also the office of Solicitor General in Canada, established by the Solicitor General Act, which is now chapter 253 of the Revised Statutes of Canada, 1952. Originally the Solicitor General was not a member of the Privy Council and not a member of the cabinet, but in recent years he has been both. His functions, as set out in the Solicitor General Act, are to assist the Minister of Justice in the counsel work of the Department of Justice and to perform such other duties as are assigned to him by the Governor in Council.

IV. ORGANIZATION OF DEPARTMENT

1. *Legal Branch*

The Legal Branch, which functions directly under the Deputy Minister of Justice and Deputy Attorney General, consists of

- (a) two Assistant Deputy Ministers, one of whom is a common law lawyer and one of whom is a civil law (Quebec) lawyer,
- (b) a number of senior officers, who are classified as Senior Advisory Counsel, and
- (c) a number of junior legal officers who are classified as Advisory Counsel, Grade 1, Advisory Counsel, Grade 2, or Advisory Counsel, Grade 3.

For the purpose of carrying on the legal work of the Department, the Legal Branch is divided into six sections, as follows:

- (a) Civil Litigation Section,
- (b) Legislation Section,
- (c) Advisory Section,
- (d) Criminal Law Section,
- (e) Civil Law Section,
- (f) Departmental Services Section.

Each of these sections is headed by a Director holding the position of Senior Advisory Counsel.

The work of the various sections may be described as follows:

(a) *Civil Litigation Section*

This Section is charged with all matters involving actual litigation for or against the Government of Canada and originating in any of the common law provinces. All land transactions and other non-criminal matters usually requiring the employment of legal agents in those provinces are also the responsibility of the Civil Litigation Section.

By section 5(d) of the Department of Justice Act, the Attorney General of Canada is charged with the regulation and conduct of all litigation for or against the Crown or any public department in respect of any subject within the authority or jurisdiction of Canada. The following are the principal classes of litigation:

- (i) *Petitions of Right*—These are regulated by the Petition of Right Act, R.S.C. 1952, c. 210. No fiat is necessary. The suppliant institutes proceedings by filing his petition in the Exchequer Court and the matter then proceeds as an ordinary action.
- (ii) *Informations in the Exchequer Court*—The Attorney General may proceed by information in the Exchequer Court in respect of any claim by the Crown against a subject. In addition, the Attorney General is required, by s. 27 of the Expropriation Act, R.S.C. 1952, c. 106, to file an information in the Exchequer Court where land has been expropriated and the compensation to be paid cannot be agreed upon with the former owner.
- (iii) *Actions in the Provincial Courts*—The Attorney General may elect to proceed against a subject in the provincial courts. As a matter of policy, the Crown does not proceed in the provincial courts where the Crown debtor has a counter-claim in an amount in respect of which the provincial court has no jurisdiction. In such cases, an information is filed in the Exchequer Court so that the subject may proceed by way of petition of right and have the two trials joined. By virtue of the Crown Liability Act, negligence claims against the Crown not exceeding one thousand dollars may be enforced by action in the provincial courts against the Attorney General of Canada.
- (iv) *Income Tax and Succession Duty Appeals and Appeals from the Decision of various other Administrative Tribunals*—Provision is contained in various statutes for appeals to the Exchequer Court and such appeals fall within the class of ordinary litigation.
- (v) *Crown Litigation conducted in the name of Nominated Persons*—Various statutes provide for litigation involving the rights of the Crown being conducted in the name of Crown agents, such as the Canadian Commercial Corporation and other Crown companies. The device is purely procedural and is to enable the matter to be litigated in a court that would not otherwise have jurisdiction.
- (vi) *Disputes between Governments*—S. 31 of the Exchequer Court Act gives the Court jurisdiction, *inter alia*, in case of controversy between Canada and a province, if the legislature of the province concerned has passed an Act agreeing that the Court shall have such jurisdiction.
- (vii) *Actions in Rem*—Under the taxation statutes, provision is made for forfeiture of goods that are the subject-matter of offences against the statute and these forfeitures are enforced by actions *in rem* in the Exchequer Court instituted by information.
- (viii) *Actions against the Attorney General*—In certain cases, an action can be instituted against the Attorney General for a declaration where a petition of right would not lie because no relief is sought. There are also cases where the Attorney General may be made a defendant in proceedings against the Crown when rights of the Crown are incidentally involved.

- (ix) *Litigation between subjects in which the Crown has a direct or indirect interest*—The Crown sometimes undertakes the defence of litigation against a servant in respect of something that he did in the course of his employment or against a person who has a right of indemnity against the Crown. The Attorney General occasionally intervenes in litigation involving constitutional questions.
- (x) *References to the Supreme Court of Canada*—By s. 55 of the Supreme Court Act, the Governor in Council may refer important questions of law or fact to the Supreme Court of Canada for decision. These references usually arise out of constitutional questions.

The civil litigation is conducted, under the direction of the Attorney General of Canada, by counsel who are legal officers of the Department to the extent that that is feasible or, where that is not feasible, by practising lawyers who are instructed for particular cases.

(b) *Legislation Section*

Beginning in 1946, an organization was established in the Department of Justice for the preparation of government measures, and a system has been designed to ensure that the legislative programme for a session will be adequately prepared in sufficient time to enable it to be dealt with. Prior to that time departments prepared their own bills, assisted by the Department of Justice if they so requested. Now, all Bills must be prepared in the Department of Justice in the Legislation Section by persons who have been specially trained for this type of work. The Director of this Section is designated as Parliamentary Counsel, and the Section is under the direction of one of the Assistant Deputy Ministers.

A cabinet committee on legislation has been established to superintend the preparation of the legislative programme. The Assistant Deputy Minister in charge of the Section attends all meetings of the committee. Members of the Legislation Section, during the progress of a session, assist Ministers in piloting their legislation through Parliament.

In addition, the Legislation Section has also undertaken the following duties:

- (i) *Territorial Ordinances*—Preparation of current legislative programmes of the Councils of the Yukon Territory and Northwest Territories and revisions of Ordinances of these Territories.
- (ii) *Regulations*—Preparation of regulations under statutes upon request of the departments concerned.
- (iii) *Office Consolidations*—Preparation of office consolidations of statutes and amendments for all government departments.
- (iv) *Formal Documents*—Preparation of documents issued under the great seal (letters patent, commissions, proclamations, etc.).
- (v) *Revision of the Statutes*—Preparation of a consolidation of each statute from session to session for use at the next general revision of the statutes.
- (vi) *Judges*—Documents and opinions in relation to judges, their appointment and retirement, and travelling allowances.

(c) *Advisory Section*

The Minister of Justice is, by statute, charged with the responsibility of giving legal advice to the Government of Canada, including the various departments and Crown corporations. Such advice is given by the Deputy Attorney General of Canada and the Advisory Section of the Department of Justice is responsible for the preparation of the opinions given. The Advisory Section performs this function in the following ways:

- (i) By the preparation of written legal opinions at the request of government departments and Crown corporations. The matters upon which legal advice is requested are usually submitted in written form by the department or corporation concerned and these matters include:
 1. advice as to the interpretation of statutes for the administration of which the department in question is responsible, financial statutes affecting the department, statutes affecting employees in the department, etc.; many problems concern the authority of the department in the conduct of its administration;
 2. advice concerning the legal relations between the department and members of the public, including the preparation and interpretation of contracts and regulations; and
 3. tort, contract and other claims by or against the department.
- (ii) By the co-ordination of the work of officers of the Department of Justice who are members of interdepartmental committees and the preparation of legal advice to be given to the committees.

The Advisory Section is also responsible for special studies undertaken on direction of the Deputy Attorney General of Canada.

(d) *Criminal Law Section*

- (i) *Remissions*—The Remission Service, which previously operated separately from the Legal Branch, has now been incorporated in the Criminal Law Section. This Section administers the Ticket of Leave Act, R.S.C. 1952, c. 264, and is charged with considering applications for the exercise of the royal prerogative of mercy.

Under the Ticket of Leave Act, the Governor General, acting on the advice of the Minister of Justice, or a designated member of the Government, may grant to a person under sentence of imprisonment a licence to be at large in Canada or in such part thereof as is mentioned in the licence during such portion of his term of imprisonment and upon such terms and conditions as the Governor General may see fit.

Every capital case is reviewed by the Governor in Council, whether or not the accused makes application for review, and a decision is taken in each case as to whether or not the prerogative of mercy shall be exercised. A report and recommendation is made to the Governor in Council in each case by either the Minister of Justice or the Solicitor General.

Applications for an exercise of the royal prerogative of mercy include also applications for remission of pecuniary penalties, lifting or suspension of prohibitions ordered by the court, and the return of goods forfeited to the Crown.

Under section 595 of the Criminal Code, the Minister of Justice may, on application for the mercy of the Crown on behalf of a person convicted on indictment, refer the case to the Court of Appeal or direct a new trial. The principal function of the Remission Service is to collect the facts necessary to enable the Minister of Justice to decide what recommendations he will make to the Governor in Council on applications for the mercy of the Crown.

- (ii) *Extradition*—The Criminal Law Section is in charge of the administration of the Extradition Act, R.S.C. 1952, c. 322.
- (iii) *Prosecutions*—The Criminal Law Section has the direction of prosecutions for infractions of federal statutes other than the Criminal Code. The responsibility for the enforcement of all criminal law, including the Criminal Code, in the Northwest Territories and the Yukon Territory has been taken over from the Department of Northern Affairs and National Resources.

(e) *Civil Law Section*

This Section corresponds to the Civil Litigation Section, for all matters concerned with the civil law (*droit civil*), as opposed to the common law. It deals with all litigation for or against the Government of Canada and with all land transactions and other non-criminal matters requiring the employment of legal agents in the Province of Quebec.

It may, therefore, be said that the foregoing description of the duties of the Civil Litigation Section with respect to the common law provinces, also applies to the duties of the Civil Law Section with respect to the Province of Quebec.

The Civil Law Section also advises the Minister of Justice in certain matters that do not necessarily involve actual litigation, but are essentially concerned with the application of the Civil Code of the Province of Quebec. This Code is based on the old French law in force in the Province of Quebec before 1866 and is similar to the Code Napoleon presently in force in France.

(f) *Departmental Services Section*

This Section comprises the legal advisers furnished to other departments. The legal advisers in the Departments of Agriculture, Citizenship and Immigration, Finance, Northern Affairs and National Resources, Privy Council, Public Works, Trade and Commerce, and Mines and Technical Surveys are officers of the Department of Justice. Their function is, under the Deputy Attorney General of Canada, to furnish legal advice and obtain official opinions of the Deputy Attorney General of Canada for the departments to which they are assigned. Their activities are co-ordinated through the Director of the Section.

(g) *Miscellaneous*

In addition to the foregoing, certain miscellaneous matters fall within the purview of the Legal Branch of the Department of Justice.

The Minister of Justice advises the Government on the appointment and retirement of judges, and he has supervision of the staffs of the Supreme Court of Canada and the Exchequer Court of Canada.

The statutes of the provinces are examined in the Department of Justice with a view to possible disallowance under the British North America Act.

The Minister of Justice is also the Attorney General of the Northwest Territories and the Yukon Territory. He is chairman of the legislation committee of the cabinet, and is a member of the Treasury Board.

2. Bankruptcy Branch

The Minister of Justice is responsible for the administration of the Bankruptcy Act, R.S.C. 1952, c. 14. Pursuant to section 5, it is the Minister who authorizes the issue of trustee licences to applicants and the annual renewals thereof. He may, for cause, suspend or cancel the licence of any licensee and may remove the trustee from office and appoint another in his stead. The Minister is empowered by the Act to authorize any district, county or other judge to exercise any or all of the powers and jurisdiction of the court or of a judge or registrar thereof.

The Act provides for the appointment, by the Governor in Council, of a Superintendent of Bankruptcy to supervise the administration of all estates to which the Act applies.

The duties of the Superintendent include:

- (a) receiving applications for licences and renewals thereof;
- (b) making an investigation into the character and qualifications of each applicant and reporting his findings to the Minister;
- (c) subject to authorization by the Minister, issuing the licences and renewals as well as keeping a record thereof;
- (d) requiring the filing of adequate security and enforcing it when the need arises;
- (e) keeping appropriate records;
- (f) receiving complaints concerning the trustees' administration and making such investigations as are deemed advisable;
- (g) inspecting or investigating estates as may appear expedient and reporting any irregularities to the Minister; and
- (h) examining trustees' statements of receipts and disbursements.

3. Penitentiaries Branch

Section 3 of the Penitentiary Act, R.S.C. 1952, c. 206, provides that the Minister shall have the control and management of all penitentiaries and all prisoners and other persons confined therein and inmates thereof and all matters connected therewith.

Section 5 provides that the Commissioner of Penitentiaries shall, under the Minister, have the control and management of all penitentiaries and all prisoners and other persons confined therein and inmates thereof and over all matters connected therewith.

In practice, the day-to-day administration of the penitentiaries is carried out under the direction of the Commissioner. Important matters of policy are submitted to the Minister for his approval, and it has been the normal practice to inform the Minister and obtain his approval of matters that involve negotiations with the public.

Associated with the Commissioner, there are two Deputy Commissioners. One of the Deputy Commissioners has charge of education in the penitentiaries and training of personnel, and is responsible for the supervision of the work of the chaplains and librarians, as well as relationships with the John Howard Society and other Prisoners' Aid Organizations; the other Deputy Commissioner has charge of the development and supervision of the medical and psychiatric services.

There are also three Assistant Commissioners: a senior Assistant Commissioner who, under the Commissioner, is responsible for administration generally, an Assistant Commissioner who supervises the prison industries and farms and also vocational training, and an Assistant Commissioner who is responsible for financial control.

4. Combines Branch

The Combines Investigation Act provides for the investigation of offences against sections 32 and 34 of the Act and sections 411 and 412 of the Criminal Code. These sections forbid, mainly:

- (1) Combinations which, if carried into effect, would limit production, restrict channels of distribution, or fix prices or other conditions of sale in a manner which is undue or to the detriment of the public;
- (2) Mergers, trusts and monopolies which operate or are likely to operate to the detriment of the public;
- (3) The practice of resale price maintenance;
- (4) Price discrimination in regard to competing customers; and the selling of goods at unreasonably low prices with the design or effect of substantially lessening competition or eliminating competitors.

The legislation provides for a Director of Investigation and Research and his staff and for a Restrictive Trade Practices Commission. The Director's staff consists, in part, of lawyers and, in part, of economists.

The Director is required to commence an investigation into a suspected offence

- (a) upon formal application of six adult citizens,
- (b) upon direction of the Minister, and
- (c) whenever he, himself, has reasonable grounds for believing that an offence is being or about to be committed.

When the Director has gathered together all the information relating to an inquiry, if he believes it discloses an offence, he compiles it into a "Statement of Evidence" which he presents to the Commission and to the persons against whom allegations are made in the Statement.

5. Restrictive Trade Practices Commission

The Restrictive Trade Practices Commission, comprising not more than three members, is responsible for appraising the evidence submitted to it by the Director of Investigation and Research under the Combines Act and the parties under investigation, and for making a report to the Minister. Investigations are instituted on the formal application of six citizens, or on direction of the Minister, or on the initiative of the Director. When the Director has gathered all the information the Commission hears argument and following this hearing the Commission prepares and submits a report to the Minister. Prosecutions may be commenced by the attorney general of a province or at the instance of the Attorney General of Canada.

6. Royal Canadian Mounted Police

The Royal Canadian Mounted Police Force is established under the Royal Canadian Mounted Police Act, R.S.C. 1952, c. 241, and is under the control and management of the Minister of Justice. This Force conducts throughout Canada the police work required in the administration of all statutes of the Parliament of Canada, other than the Criminal Code. By arrangement with a number of the provinces, the Force has undertaken provincial police duties and in those provinces has charge of police work under the Criminal Code and all provincial statutes. Similar agreements have also been made with municipalities throughout Canada.

V. STAFF

1. Professional Staff

The work of the legal officer in the Department of Justice as a professional man is carried on under conditions not unlike those applicable to the lawyer who is a partner or an employee in a large legal firm. The lawyer who is a partner or an employee in a large legal firm carries on his day-to-day work, taking instructions from the various clients of the firm assigned to him and having conferences with members of the public; he must conduct himself in accordance with the traditions and principles his associates or employers have adopted and he consults with them on any matter requiring their approval or decision. Similarly, a legal officer in the Department of Justice, in the course of his ordinary day-to-day professional work, receives instructions from the various other departments and government agencies, and he carries out his professional duties in consultation with those departments and agencies, in accordance with the traditions and principles of the Department, which require him to consult with his superiors and to take directions on matters of special importance.

The recruiting plan of the Department in recent years has been to recruit officers at the time they are admitted to the bar, or very shortly thereafter, so that the Department may be staffed with lawyers who have received their training and experience in the special branches of professional work arising in the conduct of the business of government. The aim has been, and is, to take only those who

have superior qualifications, both academic and otherwise, and to give them as broad a training in the work of the Department as is possible, before (if ever) they settle down to work in some particular branch of the Department.

2. *Salaries*

The present policy with regard to salaries for legal officers is that there should be a reasonable expectation on the part of a legal officer who demonstrates that he has the professional qualifications and the willingness to assume and discharge the responsibilities of a senior legal officer that he will, in the course of ten or twelve years in the Department, achieve approximately the income of a district or county court judge (at present, about \$11,500) but that he will not rise higher than that in the absence of his being promoted to a more senior position or of other special circumstance. The salaries payable under the present salary classification for a reasonably fast line of promotion in the Advisory Counsel positions are as follows:

1st year Grade I	\$4740
2nd year Grade II	5580
3rd year Grade II	5880
4th year Grade III	6360
5th year Grade III	6660

The salaries of officers holding the position of Senior Advisory Counsel are fixed by the Governor in Council and at present vary from \$7,500 to \$12,000. The Assistant Deputy Ministers are paid \$15,000 and the Deputy Minister is paid up to \$20,000.

3. *Superannuation*

Members of the permanent staff of the Department come under the Public Service Superannuation Act. Each employee is required to make a contribution towards pension, which is deducted from salary. The contribution is six per cent of salary in the case of male employees and five per cent in the case of female employees. The government contributes an equal amount. Retirement is optional at age sixty and compulsory at age sixty-five. Upon retirement, a contributor is eligible for a life pension equal to two per cent of his average salary for the ten years of highest salary, for every year of service up to a maximum of thirty-five; one-half of the pension continues to the widow of a retired employee.

The Public Service Superannuation Act also includes provision for a compulsory death benefit scheme. The amount of the benefit, payable upon death to the surviving spouse or estate, is \$5,000 or the salary of the employee, whichever is the lesser. Contributions are made by deduction from salary at the rate of ten cents per month for every \$250 of death benefit.

4. *Leave of Absence*

Members of the legal staff are entitled to the annual holiday leave and other leave applicable to the civil service generally.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
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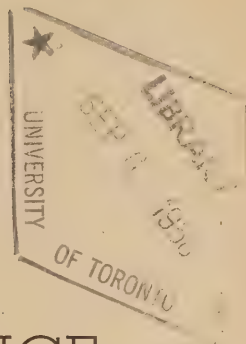
MEMORANDUM

on the

LEGAL BRANCH

of the

DEPARTMENT OF JUSTICE
GOVERNMENT OF CANADA



DEPARTMENT OF JUSTICE
OTTAWA

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FOREWORD

THE purpose of this Memorandum is to acquaint law students and lawyers who might be interested in a legal career in the Department of Justice with the duties and functions of the Department of Justice, particularly the Legal Branch thereof. Prospective candidates desiring further information regarding the activities of the Department and opportunities for employment therein should write to the Deputy Minister of Justice, Ottawa.

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THE LEGAL BRANCH OF THE DEPARTMENT OF JUSTICE GOVERNMENT OF CANADA

I. INTRODUCTION

The Government of Canada is divided into departments, each of which is charged with some branch of government business. In the United Kingdom, some of the older departments were organized under the discretionary authority of the Crown as head of the executive, but the more modern departments were established by statute. In Canada all government departments are established by statute.

The head of each department is a Minister of the Crown who is a member of the Queen's Privy Council for Canada and a member of the cabinet. Ministers must be members of either the Senate or the House of Commons, but at the present time all Ministers of departments are members of the House of Commons. There is for each department a deputy minister appointed by the Governor in Council; the officers, clerks and other employees who are required for the management of the business of the department are appointed under the provisions of the Civil Service Act.

The principal functions of the departments are set out in the statutes creating them. In addition, each department is responsible for the administration of the statutes pertaining to the subject-matter of the department.

Statutory powers and duties are vested in or imposed upon the Ministers of the Crown. As a practical matter, it must be recognized, and it has been recognized by the courts, that it is impossible for a Minister to carry out his powers and duties personally. He can perform his powers and duties only through the staff that is provided to him for the purpose. A Minister cannot do personally all the things that he is required to do, and he cannot be aware of all the matters that are required to be done. The ordinary affairs of his department are, therefore, handled by the permanent service of his department in accordance with the principles and methods that he has directed or approved.

The courts have recognized that this is the way in which our parliamentary system of government must operate, and they will not permit any person other than the Minister to challenge the exercise of his powers on the ground that the Minister was not himself a party thereto.

The Minister is, of course, responsible for everything done in the conduct of the business of his department; those matters that are of particular importance are, therefore, submitted to him for consideration and decision, and his officers are accountable to him for their conduct of the affairs of the department.

The Department of Justice consists of a number of branches or divisions. The purely legal functions are performed by the Legal Branch. In addition there is the Bankruptcy Branch, the Penitentiaries Branch, and the Combines Investigation Branch, and the Minister of Justice is the Minister responsible for the Royal Canadian Mounted Police and the Restrictive Trade Practices Commission.

The Department of Justice was first established by the Department of Justice Act, chapter 39 of the statutes of 1868. This statute has been carried forward to the present day without substantial change, and now appears as chapter 71 of the Revised Statutes of Canada, 1952. The Department of Justice Act sets out, in a general way, the functions of the Department. In addition, the Department of Justice is responsible for the administration of the following Acts:

Bankruptcy Act, R.S.C. 1952, c. 14
Canada Evidence Act, R.S.C. 1952, c. 307
Combines Investigation Act, R.S.C. 1952, c. 314
Criminal Code, 1953-54, c. 51
Crown Liability Act, 1952-53, c. 30
Department of Justice Act, R.S.C. 1952, c. 71
Exchequer Court Act, R.S.C. 1952, c. 98
Expropriation Act, R.S.C. 1952, c. 106
Extradition Act, R.S.C. 1952, c. 322
Financial Administration Act, R.S.C. 1952, c. 116
Fugitive Offenders Act, R.S.C. 1952, c. 127
Identification of Criminals Act, R.S.C. 1952, c. 144
Inquiries Act, R.S.C. 1952, c. 154
Interpretation Act, R.S.C. 1952, c. 158
Judges Act, R.S.C. 1952, c. 159
Juvenile Delinquents Act, R.S.C. 1952, c. 160
Official Secrets Act, R.S.C. 1952, c. 198
Penitentiary Act, R.S.C. 1952, c. 206
Petition of Right Act, R.S.C. 1952, c. 210
Prisons and Reformatories Act, R.S.C. 1952, cc. 217, 333
Royal Canadian Mounted Police Act, R.S.C. 1952, c. 241
Solicitor General Act, R.S.C. 1952, c. 253
Supreme Court Act, R.S.C. 1952, cc. 259, 335
Ticket of Leave Act, R.S.C. 1952, c. 264
Yukon Administration of Justice Act, R.S.C. 1952, c. 299.

The Department of Justice is the legal department of the Government of Canada and performs somewhat the same functions in relation to the Government of Canada as an ordinary lawyer in private practice performs in relation to his clients, or as a law department of a large corporation, such as the Canadian Pacific Railway Company, performs in relation to the corporation.

The functions of the Department have, to a large extent, been inherited from different government offices in the United Kingdom. A brief account of those offices might, therefore, be usefully given before considering, in detail, the work and organization of the Department of Justice.

II. UNITED KINGDOM OFFICES

The principal offices in the United Kingdom Government having legal functions are the offices of the Lord Chancellor, the Attorney General, the Solicitor to the Treasury, Parliamentary Counsel, the Director of Public Prosecutions and the Secretary of State for the Home Department.

1. *The Lord Chancellor*

The Lord Chancellor is a member of the Queen's Privy Council and a member of the Cabinet; he is Speaker of the House of Lords and the official channel of communication between the Sovereign and Parliament; he is a member of the High Court of Justice and its president, president of the Chancery Division of the High Court of Justice, and an *ex officio* judge and president of the Court of Appeal.

The Lord Chancellor is custodian of the great seal and causes it to be affixed to state documents. Originally, the form of instruments to be sealed by the great seal was settled by the Attorney General, but now the seal is affixed through the office of the Clerk of the Crown in Chancery. The Lord Chancellor advises the Sovereign on the appointment of judges, and, generally, he oversees the administration of justice and the business of the courts.

2. *Law Officers*

The law officers of the Crown are the Attorney General and the Solicitor General. Historically, the Attorney General was the personal legal adviser to the Sovereign, and he represented the Sovereign in the courts. The Solicitor General acted when the office of Attorney General was vacant, or when the Attorney General was unable to act in any particular case.

Originally the Attorney General and the Solicitor General were members of the bar in private practice. Today they are members of Parliament and are not permitted to engage in private practice. They are not, however, members of the cabinet.

3. *Solicitor to the Treasury*

The Treasury Department has charge of all matters relating to public finance or the civil service. The Solicitor to the Treasury Department deals with legal problems arising in the day-to-day work of the government departments and also supplies legal services to the various government departments who do not have their own legal branches.

4. *Parliamentary Counsel*

A special branch of the Treasury Department has been established for the purpose of preparing government legislation, and is known as the Office of Parliamentary Counsel of Her Majesty's Treasury. Originally, the Parliamentary Counsel Office prepared only government bills involving financial matters, but at the present time the office prepares all government legislation.

5. *Director of Public Prosecutions*

The Director of Public Prosecutions, as his name implies, has charge of criminal prosecutions.

6. *Secretary of State for the Home Department*

The Home Department has charge of matters pertaining to prisons, executions and remissions, controls the London Police Force and Scotland Yard and superintends the police forces in the counties and county boroughs. Generally speaking, the Department is responsible for the internal peace of the country.

III. FUNCTIONS OF THE DEPARTMENT OF JUSTICE

The principal functions of the Department of Justice are set out in the Department of Justice Act. Section 2 provides that there shall be a department called the Department of Justice over which the Minister of Justice is to preside; the Minister of Justice is also *ex officio* the Attorney General of Canada. The duties of the Minister of Justice and Attorney General are set out in sections 4 and 5 of the Act, as follows:

“4. The Minister of Justice shall

- (a) be the official legal adviser of the Governor General and the legal member of Her Majesty's Privy Council for Canada;
- (b) see that the administration of public affairs is in accordance with law;
- (c) have the superintendence of all matters connected with the administration of justice in Canada, not within the jurisdiction of the governments of the provinces;
- (d) advise upon the legislative Acts and proceedings of each of the legislatures of the provinces of Canada, and generally advise the Crown upon all matters of law referred to him by the Crown;
- (e) have the superintendence of the penitentiaries and the prison system of Canada;
- (f) be charged generally with such other duties as are at any time assigned by the Governor in Council to the Minister of Justice.

5. The Attorney General of Canada shall

- (a) be entrusted with the powers and charged with the duties that belong to the office of the Attorney General of England by law or usage, so far as those powers and duties are applicable to Canada, and also with the powers and duties that, by the laws of the several provinces, belonged to the office of attorney general of each province up to the time when the *British North America Act 1867*, came into effect, so far as those laws under the provisions of the said Act are to be administered and carried into effect by the Government of Canada;
- (b) advise the heads of the several departments of the Government upon all matters of law connected with such departments;

- (c) be charged with the settlement and approval of all instruments issued under the Great Seal of Canada;
- (d) have the regulation and conduct of all litigation for or against the Crown or any public department, in respect of any subject within the authority or jurisdiction of Canada;
- (e) be charged generally with such other duties as are at any time assigned by the Governor in Council to the Attorney General of Canada."

There is also the office of Solicitor General in Canada, established by the Solicitor General Act, which is now chapter 253 of the Revised Statutes of Canada, 1952. Originally the Solicitor General was not a member of the Privy Council and not a member of the cabinet, but in recent years he has been both. His functions, as set out in the Solicitor General Act, are to assist the Minister of Justice in the counsel work of the Department of Justice and to perform such other duties as are assigned to him by the Governor in Council.

IV. ORGANIZATION OF DEPARTMENT

1. *Legal Branch*

The Legal Branch, which functions directly under the Deputy Minister of Justice and Deputy Attorney General, consists of

- (a) three Assistant Deputy Ministers, two of whom are common law lawyers and one of whom is a civil law (Quebec) lawyer,
- (b) a number of senior officers, who are classified as Senior Advisory Counsel, and
- (c) a number of junior legal officers who are classified as Advisory Counsel, Grade 1, Advisory Counsel, Grade 2, or Advisory Counsel, Grade 3.

For the purpose of carrying on the legal work of the Department, the Legal Branch is divided into five sections, as follows:

- (a) Civil Litigation Section,
- (b) Legislation Section,
- (c) Advisory Section,
- (d) Criminal Law Section,
- (e) Civil Law Section.

Each of these sections is headed by a Director; three directors are Assistant Deputy Ministers, and two Directors hold the position of Senior Advisory Counsel.

The work of the various sections may be described as follows:

(a) *Civil Litigation Section*

This Section is charged with all matters involving actual litigation for or against the Government of Canada and originating in any of the common law provinces. All land transactions and other non-criminal matters usually requiring the employment of legal agents in those provinces are also the responsibility of the Civil Litigation Section.

By section 5(d) of the Department of Justice Act, the Attorney General of Canada is charged with the regulation and conduct of all litigation for or against the Crown or any public department in respect of any subject within the authority or jurisdiction of Canada. The following are the principal classes of litigation:

- (i) *Petitions of Right*—These are regulated by the Petition of Right Act, R.S.C. 1952, c. 210. No fiat is necessary. The suppliant institutes proceedings by filing his petition in the Exchequer Court and the matter then proceeds as an ordinary action.
- (ii) *Informations in the Exchequer Court*—The Attorney General may proceed by information in the Exchequer Court in respect of any claim by the Crown against a subject. In addition, the Attorney General is required, by s. 27 of the Expropriation Act, R.S.C. 1952, c. 106, to file an information in the Exchequer Court where land has been expropriated and the compensation to be paid cannot be agreed upon with the former owner.
- (iii) *Actions in the Provincial Courts*—The Attorney General may elect to proceed against a subject in the provincial courts. As a matter of policy, the Crown does not proceed in the provincial courts where the Crown debtor has a counter-claim in an amount in respect of which the provincial court has no jurisdiction. In such cases, an information is filed in the Exchequer Court so that the subject may proceed by way of petition of right and have the two trials joined. By virtue of the Crown Liability Act, negligence claims against the Crown not exceeding one thousand dollars may be enforced by action in the provincial courts against the Attorney General of Canada.
- (iv) *Income Tax and Succession Duty Appeals and Appeals from the Decision of various other Administrative Tribunals*—Provision is contained in various statutes for appeals to the Exchequer Court and such appeals fall within the class of ordinary litigation.
- (v) *Crown Litigation conducted in the name of Nominated Persons*—Various statutes provide for litigation involving the rights of the Crown being conducted in the name of Crown agents, such as the Canadian Commercial Corporation and other Crown companies. The device is purely procedural and is to enable the matter to be litigated in a court that would not otherwise have jurisdiction.
- (vi) *Disputes between Governments*—S. 31 of the Exchequer Court Act gives the Court jurisdiction, *inter alia*, in case of controversy between Canada and a province, if the legislature of the province concerned has passed an Act agreeing that the Court shall have such jurisdiction.
- (vii) *Actions in Rem*—Under the taxation statutes, provision is made for forfeiture of goods that are the subject-matter of offences against the statute and these forfeitures are enforced by actions *in rem* in the Exchequer Court instituted by information.
- (viii) *Actions against the Attorney General*—In certain cases, an action can be instituted against the Attorney General for a declaration where a petition of right would not lie because no relief is sought. There are also cases where the Attorney General may be made a defendant in proceedings against the Crown when rights of the Crown are incidentally involved.

- (ix) *Litigation between subjects in which the Crown has a direct or indirect interest*—The Crown sometimes undertakes the defence of litigation against a servant in respect of something that he did in the course of his employment or against a person who has a right of indemnity against the Crown. The Attorney General occasionally intervenes in litigation involving constitutional questions.
- (x) *References to the Supreme Court of Canada*—By s. 55 of the Supreme Court Act, the Governor in Council may refer important questions of law or fact to the Supreme Court of Canada for decision. These references usually arise out of constitutional questions.

The civil litigation is conducted, under the direction of the Attorney General of Canada, by counsel who are legal officers of the Department to the extent that that is feasible or, where that is not feasible, by practising lawyers who are instructed for particular cases.

(b) *Legislation Section*

Beginning in 1946, an organization was established in the Department of Justice for the preparation of government measures, and a system has been designed to ensure that the legislative programme for a session will be adequately prepared in sufficient time to enable it to be dealt with. Prior to that time departments prepared their own bills, assisted by the Department of Justice if they so requested. Now, all Bills must be prepared in the Department of Justice in the Legislation Section by persons who have been specially trained for this type of work. The Director of this Section is designated as Parliamentary Counsel.

A cabinet committee on legislation has been established to superintend the preparation of the legislative programme. The Parliamentary Counsel attends all meetings of the committee. Members of the Legislation Section, during the progress of a session, assist Ministers in piloting their legislation through Parliament.

In addition, the Legislation Section has also undertaken the following duties:

- (i) *Territorial Ordinances*—Preparation of current legislative programmes of the Councils of the Yukon Territory and Northwest Territories and revisions of Ordinances of these Territories.
- (ii) *Regulations*—Preparation of regulations under statutes upon request of the departments concerned.
- (iii) *Office Consolidations*—Preparation of office consolidations of statutes and amendments for all government departments.
- (iv) *Formal Documents*—Preparation of documents issued under the great seal (letters patent, commissions, proclamations, etc.).
- (v) *Revision of the Statutes*—Preparation of a consolidation of each statute from session to session for use at the next general revision of the statutes.

(c) *Advisory Section*

The Minister of Justice is, by statute, charged with the responsibility of giving legal advice to the Government of Canada, including the various departments and Crown corporations. Such advice is given by the Deputy Attorney General

of Canada and the Advisory Section of the Department of Justice is responsible for the preparation of the opinions given. The Advisory Section performs this function in the following ways:

- (i) By the preparation of written legal opinions at the request of government departments and Crown corporations. The matters upon which legal advice is requested are usually submitted in written form by the department or corporation concerned and these matters include:
 - 1. advice as to the interpretation of statutes for the administration of which the department in question is responsible, financial statutes affecting the department, statutes affecting employees in the department, etc.; many problems concern the authority of the department in the conduct of its administration;
 - 2. advice concerning the legal relations between the department and members of the public, including the preparation and interpretation of contracts and regulations; and
 - 3. motor accident and other claims by or against the department.
- (ii) By furnishing departmental legal advisers to some departments. The legal advisers in the Departments of Agriculture, Citizenship and Immigration, Finance, Northern Affairs and National Resources, Privy Council, Public Works, and Trade and Commerce are officers of the Department of Justice and members of the staff of the Advisory Section. Their function is, under the Deputy Attorney General of Canada, to furnish legal advice and obtain official opinions of the Deputy Attorney General of Canada for the departments to which they are assigned. Their activities are co-ordinated through the Director of the Advisory Section.
- (iii) By the co-ordination of the work of officers of the Department of Justice who are members of interdepartmental committees and the preparation of legal advice to be given to the committees.

The Advisory Section is also responsible for the preparation of opinions concerning the administration of the Judges Act and other legal questions concerning the Judges.

(d) Criminal Law Section

- (i) *Remissions*—The Remission Service, which previously operated separately from the Legal Branch, has now been incorporated in the Criminal Law Section. This Section administers the Ticket of Leave Act, R.S.C. 1952, c. 264, and is charged with considering applications for the exercise of the royal prerogative of mercy.

Under the Ticket of Leave Act, the Governor General, acting on the advice of the Minister of Justice, or a designated member of the Government, may grant to a person under sentence of imprisonment a licence to be at large in Canada or in such part thereof as is mentioned in the licence during such portion of his term of imprisonment and upon such terms and conditions as the Governor General may see fit.

Every capital case is reviewed by the Governor in Council, whether or not the accused makes application for review, and a decision is taken in each case as to whether or not the prerogative of mercy shall be

exercised. A report and recommendation is made to the Governor in Council in each case by either the Minister of Justice or the Solicitor General.

Applications for an exercise of the royal prerogative of mercy include also applications for remission of pecuniary penalties, lifting or suspension of prohibitions ordered by the court, and the return of goods forfeited to the Crown.

Under section 595 of the Criminal Code, the Minister of Justice may, on application for the mercy of the Crown on behalf of a person convicted on indictment, refer the case to the Court of Appeal or direct a new trial. The principal function of the Remission Service is to collect the facts necessary to enable the Minister of Justice to decide what recommendation he will make to the Governor in Council on applications for the mercy of the Crown.

- (ii) *Extradition*—The Criminal Law Section is in charge of the administration of the Extradition Act, R.S.C. 1952, c. 322.
- (iii) *Prosecutions*—The Criminal Law Section has the direction of prosecutions for infractions of federal statutes other than the Criminal Code. The responsibility for the enforcement of all criminal law, including the Criminal Code, in the Northwest Territories and the Yukon Territory has been taken over from the Department of Northern Affairs and National Resources.

(c) *Civil Law Section*

This Section corresponds to the Civil Litigation Section, for all matters concerned with the civil law (*droit civil*), as opposed to the common law. It deals with all litigation for or against the Government of Canada and with all land transactions and other non-criminal matters requiring the employment of legal agents in the Province of Quebec.

It may, therefore, be said that the foregoing description of the duties of the Civil Litigation Section with respect to the common law provinces, also applies to the duties of the Civil Law Section with respect to the Province of Quebec.

The Civil Law Section also advises the Minister of Justice in certain matters that do not necessarily involve actual litigation, but are essentially concerned with the application of the Civil Code of the Province of Quebec. This Code is based on the old French law in force in the Province of Quebec before 1866 and is similar to the Code Napoleon presently in force in France.

(f) *Miscellaneous*

In addition to the foregoing, certain miscellaneous matters fall within the purview of the Legal Branch of the Department of Justice.

The Minister of Justice advises the Government on the appointment and retirement of judges, and he has supervision of the staffs of the Supreme Court of Canada and the Exchequer Court of Canada.

The statutes of the provinces are examined in the Department of Justice with a view to possible disallowance under the British North America Act.

The Minister of Justice is also the Attorney General of the Northwest Territories and the Yukon Territory. He is chairman of the legislation committee of the cabinet, and is a member of the Treasury Board.

2. Bankruptcy Branch

The Minister of Justice is responsible for the administration of the Bankruptcy Act, R.S.C. 1952, c. 14. Pursuant to section 5, it is the Minister who authorizes the issue of trustee licences to applicants and the annual renewals thereof. He may, for cause, suspend or cancel the licence of any licensee and may remove the trustee from office and appoint another in his stead. The Minister is empowered by the Act to authorize any district, county or other judge to exercise any or all of the powers and jurisdiction of the court or of a judge or registrar thereof.

The Act provides for the appointment, by the Governor in Council, of a Superintendent of Bankruptcy to supervise the administration of all estates to which the Act applies.

The duties of the Superintendent include:

- (a) receiving applications for licences and renewals thereof;
- (b) making an investigation into the character and qualifications of each applicant and reporting his findings to the Minister;
- (c) subject to authorization by the Minister, issuing the licences and renewals as well as keeping a record thereof;
- (d) requiring the filing of adequate security and enforcing it when the need arises;
- (e) keeping appropriate records;
- (f) receiving complaints concerning the trustees' administration and making such investigations as are deemed advisable;
- (g) inspecting or investigating estates as may appear expedient and reporting any irregularities to the Minister; and
- (h) examining trustees' statements of receipts and disbursements.

3. Penitentiaries Branch

Section 3 of the Penitentiary Act, R.S.C. 1952, c. 206, provides that the Minister shall have the control and management of all penitentiaries and all prisoners and other persons confined therein and inmates thereof and all matters connected therewith.

Section 5 provides that the Commissioner of Penitentiaries shall, under the Minister, have the control and management of all penitentiaries and all prisoners and other persons confined therein and inmates thereof and over all matters connected therewith.

In practice, the day-to-day administration of the penitentiaries is carried out under the direction of the Commissioner. Important matters of policy are submitted to the Minister for his approval, and it has been the normal practice to inform the Minister and obtain his approval of matters that involve negotiations with the public.

Associated with the Commissioner, there are two Deputy Commissioners. One of the Deputy Commissioners has charge of education in the penitentiaries and training of personnel, and is responsible for the supervision of the work of the chaplains and librarians, as well as relationships with the John Howard Society and other Prisoners' Aid Organizations; the other Deputy Commissioner has charge of the development and supervision of the medical and psychiatric services.

There are also three Assistant Commissioners; a senior Assistant Commissioner who, under the Commissioner, is responsible for administration generally, an Assistant Commissioner who supervises the prison industries and farms and also vocational training, and an Assistant Commissioner who is responsible for financial control.

4. Combines Branch

The Combines Investigation Act, R.S.C. 1952, c. 314, is designed to protect the public interest in free competition by prohibiting agreements and monopolies that unduly limit competition or substantially control the supply of any class of goods to the detriment of the public. The Act provides for the investigation by the Director of Investigation and Research of trade combinations, monopolies, trusts and mergers that have operated or are likely to operate to the detriment of the public by limiting production, fixing or enhancing prices, limiting competition or otherwise restraining trade.

5. Restrictive Trade Practices Commission

The Restrictive Trade Practices Commission, comprising not more than three members, is responsible for appraising the evidence submitted to it by the Director of Investigation and Research under the Combines Act and the parties under investigation, and for making a report to the Minister. Investigations are instituted on the formal application of six citizens, or on direction of the Minister, or on the initiative of the Director. When the Director has gathered all the information the Commission hears argument and following this hearing the Commission prepares and submits a report to the Minister. Prosecutions may be commenced by the attorney general of a province or at the instance of the Attorney General of Canada.

6. Royal Canadian Mounted Police

The Royal Canadian Mounted Police Force is established under the Royal Canadian Mounted Police Act, R.S.C. 1952, c. 241, and is under the control and management of the Minister of Justice. This Force conducts throughout Canada the police work required in the administration of all statutes of the Parliament of Canada, other than the Criminal Code. By arrangement with a number of the provinces, the Force has undertaken provincial police duties and in those provinces has charge of police work under the Criminal Code and all provincial statutes. Similar agreements have also been made with municipalities throughout Canada.

V. STAFF

1. *Professional Staff*

The work of the legal officer in the Department of Justice as a professional man is carried on under conditions not unlike those applicable to the lawyer who is a partner or an employee in a large legal firm. The lawyer who is a partner or an employee in a large legal firm carries on his day-to-day work, taking instructions from the various clients of the firm assigned to him and having conferences with members of the public; he must conduct himself in accordance with the traditions and principles his associates or employers have adopted, and he consults with them on any matter requiring their approval or decision. Similarly, a legal officer in the Department of Justice, in the course of his ordinary day-to-day professional work, receives instructions from the various other departments and government agencies, and he carries out his professional duties in consultation with those departments and agencies, in accordance with the traditions and principles of the Department, which require him to consult with his superiors and to take directions on matters of special importance.

The recruiting plan of the Department in recent years has been to recruit officers at the time they are admitted to the bar, or very shortly thereafter, so that the Department may be staffed with lawyers who have received their training and experience in the special branches of professional work arising in the conduct of the business of government. The aim has been, and is, to take only those who have superior qualifications, both academic and otherwise, and to give them as broad a training in the work of the Department as is possible, before (if ever) they settle down to work in some particular branch of the Department.

2. *Salaries*

The present policy with regard to salaries for legal officers is that there should be a reasonable expectation on the part of a legal officer who demonstrates that he has the professional qualifications and the willingness to assume and discharge the responsibilities of a senior legal officer that he will, in the course of ten or twelve years in the Department, achieve approximately the salary of a district or county court judge, but that he will not rise higher than that in the absence of his being promoted to a more senior position or of other special circumstance. The salaries payable under the present salary classification for a reasonably fast line of promotion in the Advisory Counsel positions are as follows:

1st year Grade I	\$4470
2nd year Grade II	5100
3rd year Grade II	5340
4th year Grade II	5580
5th year Grade III	5940
6th year Grade III	6180
7th year Grade III	6420

The salaries of officers holding the position of Senior Advisory Counsel are fixed by the Governor in Council and presently vary from \$6500 to \$10,000. The Assistant Deputy Ministers are paid \$15,000 and the Deputy Minister is paid \$20,000.

3. *Superannuation*

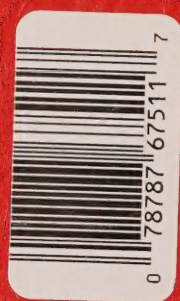
Members of the permanent staff of the Department come under the Public Service Superannuation Act. Each employee is required to make a contribution towards pension, which is deducted from salary. The contribution is six per cent of salary in the case of male employees and five per cent in the case of female employees. The government contributes an equal amount. Retirement is optional at age sixty and compulsory at age sixty-five. Upon retirement, a contributor is eligible for a life pension equal to two per cent of his average salary for the ten years of highest salary, for every year of service up to a maximum of thirty-five; one-half of the pension continues to the widow of a retired employee.

The Public Service Superannuation Act also includes provision for a compulsory death benefit scheme. The amount of the benefit, payable upon death to the surviving spouse or estate, is \$5,000 or the salary of the employee, whichever is the lesser. Contributions are made by deduction from salary at the rate of ten cents per month for every \$250 of death benefit.

4. *Leave of Absence*

Members of the legal staff are entitled to the annual holiday leave and other leave applicable to the civil service generally.

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